Using legal databases to study tech-enabled harms

Wednesday, 9th of March 2022
Who We Are

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Tech Abuse

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Policing

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Law

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Victimisation
This Masterclass will cover:

1. Background on our research project on tech abuse.
2. Overview of the legal system in England and Wales.
3. Introduction to legal databases such as Westlaw.
4. Walk-through to showcase to you how the databases work.
5. Explain their relevance to the REPHRAIN community
6. Hands-on exercise to get a feel for their usage.
(1) Background
Our Project:

The applicability of the UK Computer Misuse Act 1990 for cases of technology-enabled domestic violence and abuse.
Technology-Facilitated Abuse

“Big Bucket”
Tech abuse includes:

- Excessive **text messaging**
- The use of **malicious software** so-called “stalker-/spyware”
- The deployment of (car) **trackers**
- The **impersonation** of an individual
- **Image-based abuse** offenses
- **Unauthorised access** to accounts/devices/systems
- ...
Range of Devices
National Stalking Helpline

100% involve “cyber” element
However:

Tech abuse is not a domestic abuse/stalking offense *per se.*
Common Legislation:
Criminal Justice Act 1988
Protection of Harassment Act 1997
The Serious Crime Act 2015
Criminal Damage Act 1971
Public Order Act Act 1986
Instead:
Activities such as hacking into someone’s phone or installing malicious software can fall under the UK Computer Misuse Act 1990.
Computer Misuse Act 1990

5 Criminal Offences – Focused on “Unauthorised Acts/Access”
What we want to understand:

The **applicability** of the UK Computer Misuse Act 1990 onto cases of technology-facilitated domestic abuse/IPV

- Analyse the **nature and scope of tech abuse** cases that have been dealt with through the CMA in courts.
- Evaluate the possible **benefits and drawbacks** of deploying the CMA in the context of tech abuse cases (e.g., impact on sentence length).
- Examine the **technological enablers** of domestic abuse as well as victim/survivor and perpetrator characteristics.
And to do this:

• Conduct a **systematic legal analysis** of court cases drawing on legal databases

• Pursue **one-to-one, semi-structured interviews** with academics and legal professionals (i.e., judges, barristers)

• Engage in a **news media analysis** of UK newspapers
And to do this:

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(2) Legal System

England and Wales
Individual vs. State

• **Criminal Cases** = Public / state prosecuting and individual in most cases (so individual vs. state) i.e., when the state prosecutes someone for an offence such as a robbery;
  • **Outcome**: Sentence / punishment or acquittal.
• **Civil Cases** = Private (individual vs. individual) i.e., an action for negligence or breach of contract. Family cases include child arrangements orders.
  • **Outcome**: Civil remedies include damages, injunctions, specific performance.

[https://www.cps.gov.uk/legal-guidance/victims-right-review-scheme](https://www.cps.gov.uk/legal-guidance/victims-right-review-scheme)
What laws apply?

• The **Crown Prosecution Service** (CPS) make the decision whether to prosecute. The police investigate an offence and, in most cases, simply pass on the evidence to the CPS to make a charging decision.

• There is a "2 Stage Test" which is used to decide whether to charge:
  1. Is there enough **evidence** that there is a reasonable chance of prosecution?
  2. Is it in the **public interest** to prosecute?

[https://www.cps.gov.uk/legal-guidance/victims-right-review-scheme](https://www.cps.gov.uk/legal-guidance/victims-right-review-scheme)
(3) Legal Databases
And to do this:

- Conduct a **systematic legal analysis** of court cases drawing on legal databases
- Pursue **one-to-one, semi-structured interviews** with academics and legal professionals (i.e., judges, barristers)
- Engage in a **news media analysis** of UK newspapers

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The most common ones:

• **Westlaw**: Commercial – Paywall

• **LexisNexis**: Commercial – Paywall

• **British and Irish Legal Information Institute (Bailii)**: Charity – Open
The most common ones:

- Westlaw: Commercial
- LexisNexis: Commercial
- British and Irish Legal Information Institute (Bailli): Charity

Careful: Duplication of cases across databases!

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Terminology

- **Case Law**: A decision made on a case by a court (as opposed to legislation passed by Parliament).
- **Case Report**: Report of that decision made in court.
- **Judgement**: A judge's ruling on a particular point within the case or appeal.
- **Case Overview**: A summary of a case.
  - Report often has summary of arguments before judgement.

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(4) Walk-Through
British and Irish Legal Information Institute
Access to Freely Available British and Irish Public Legal Information - DONATE to keep BAILII running - Major Donors

Welcome to BAILII, based at the Institute of Advanced Legal Studies, where you can find British and Irish law, Law Commission reports, and other law-related British and Irish material. BAILII thanks The Scotsman in establishing the Historic Scottish Law Reports project. BAILII also thanks Sentral for provision of reports. For more information, see About BAILII.

Feel free to follow us through the database as we go along!
Our Findings So Far:

• Identified **390 results** from three legal databases, culminating in **184 cases** (January 2020 – October 2020).

• Tech abuse **continues to be prevalent and common** within the domestic abuse court cases we are analysing including via:
  • **Phone** (such as abusive text messages, phone calls, monitoring messages and contacts), **Social media**, **Recording devices**, **CCTV** in the home, and Threats to **release private sexual images**.

• The CMA 1990 **could have been applied** to various of the cases:
  • **Unauthorised access** to their partner’s messages and social media accounts, and
  • **Manipulated** partner’s social media account including deleting ‘Facebook friends’ and **impersonating** other men.
(5) Relevance
Why should the REPHRAIN community care?

• Understand **emerging trends** in crime facilitated by technology
  • How are legal cases portrayed in the legal system and how much detail is provided?
• Obtain an **abundance of information and context**
  • What are the different perpetration contexts or historical and geographical developments?
• See the **law in context**
  • What works how?

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Why should the REPHRAIN community care?

• Stay **up-to-date** with legislation
  • LexisNexis has a traffic light system that shows the status of legislation and cases
• Possible **machine learning/NLP challenge** to scholars
  • How could the extraction/analysis of judgements/law reports be automated?
(6) Activity
Our Method:

- **Inclusion Criteria**: Firstly, that the cases were of relevance to domestic abuse; Secondly, that they took place in a court within England and Wales.

- **Search Term**: We used “Domestic Violence and Abuse” as our core search term across the three databases.

- **Evaluation Template**: Allows us to look at trends over time.
Summary Template (2020)

Cases combined from three legal databases:
Documents extracted from the following databases for the following cases:

1. R v featherstone [jobby Roger] Court of Appeal (Criminal Division) [2020] EWCA Crim 167 17 Jan 2020 Unknown
2. H v MF [CIV Arrangements Domestic Abuse Appeal] Family Division [2020] EWHC 16 (Fam) 22 Jan 2020 Yes
3. R v kutera [T]ing court of Appeal (Criminal Division) [2020] EWCA Crim 39 26 Feb 2020 Unknown
4. R v rijs (Mig) Court of Appeal (Criminal Division) [2020] EWCA Crim 157 5 Feb 2020 Yes / Maybe
5. R v fl [Family Division] [2020] EWCA Crim 146 (Fam) 7 Feb 2020 Maybe
6. OCA Secretary of State for Education Queen’s Bench Division (Administrative Court) [2020] EWCA CIV 218 (Admin) 13 Feb 2020 N/A
7. R v Secretary (Hisam John) Court of Appeal (Criminal Division) [2020] EWCA Crim 338 20 Feb 2020 N/A
8. R v Grant (Quaille Jesmine) Court of Appeal (Criminal Division) [2020] EWCA Crim 345 25 Feb 2020 Unknown
10. R v Nicholas (Daniel Craig) Court of Appeal (Criminal Division) [2020] EWCA Cr 1841

Cases from Westlaw from 08.11.21 to 24.11.21
00 results (each result was a different case)
Some not available to access (8 cases) and some not in England and Wales (6 cases)

27. R v HJ [Law Enforcement] Court of Appeal (Criminal Division) [2020] EWCA Crim 892 8 Jul 2020 Maybe (for a previous partner)
28. R v Oorel (Ryan Andros) Court of Appeal (Criminal Division) [2020] EWCA Crim 903 7 Jul 2020 Yes
29. Z v M [Refusal of Return] Family Division [2020] EWCA Civ 187 (Fam) 14 Jul 2020 Yes / Maybe
30. R v W Court of Appeal (Criminal Division) [2020] EWCA Crim 919 14 Jul 2020 Unsure
31. R v Reynolds (Jocdah) Court of Appeal (Criminal Division) [2020] EWCA Crim 1634 14 Jul 2020 Yes
32. A v Legal Authority Court of Appeal (Civil Division) [2020] EWCA Civ 1003 31 Jul 2020 Unknown
33. R v Beury (Ben Paul) Court of Appeal (Criminal Division) [2020] EWCA Crim 1052 6 Aug 2020 Unknown
34. A v Local Authority [Family Court] [2020] EWHC 384 1 Aug 2020 Yes
35. W v Gillin Divisional Court [2020] EWHC 1270 (Admin) 24 Aug 2020 Unknown
36. H v (a Child), Re Family Court [2020] EWHC 370 28 Aug 2020 Unknown
37. R v Barker (Kristi) Court of Appeal (Criminal Division) [2020] EWCA Crim 1093 4 Sep 2020 Unknown

Cases from Lexis Library from 29.11.21 to 17.01.22
136 results (each result was not necessarily a different case)
Some results in England and Wales (76 results) and some on Westlaw (57 results)
Some results in the same case, so no of extra documents of same case after included the first result as a new case (49)

Cases from Bailii from 10.01.22 to 12.02.22
126 results (each result was not necessarily a different case)
Some results in England and Wales (74 results) and some on Westlaw (52 results)
Some results in the same case, so no of extra documents of same case after included the first result as a new case (43)
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<td>1</td>
<td>M. Singh</td>
<td>123 Main St.</td>
<td>456 City Ave.</td>
<td>789 State Rd.</td>
<td>234 Country Ln.</td>
<td>567 Village St.</td>
<td>890 Town Ct.</td>
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**Evaluation Template (2021)**

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<td>Case Name</td>
<td>Court</td>
<td>Representation</td>
<td>Judge</td>
<td>Judgement Date</td>
<td>Decision/Sentence</td>
<td>Case Overview &amp; Relevant Legislation</td>
<td>Tech Abuse</td>
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<tr>
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</tr>
<tr>
<td>Case 1</td>
<td>Court 1</td>
<td>Represented by Advocate</td>
<td>Judge 1</td>
<td>10-Mar-21</td>
<td>Decision 1</td>
<td>Overview of case &amp; relevant legislation</td>
<td>Tech Details 1</td>
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<tr>
<td>Case 2</td>
<td>Court 2</td>
<td>Represented by Advocate 2</td>
<td>Judge 2</td>
<td>15-Mar-21</td>
<td>Decision 2</td>
<td>Overview of case &amp; relevant legislation 2</td>
<td>Tech Details 2</td>
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<tr>
<td>Case 3</td>
<td>Court 3</td>
<td>Represented by Advocate 3</td>
<td>Judge 3</td>
<td>20-Mar-21</td>
<td>Decision 3</td>
<td>Overview of case &amp; relevant legislation 3</td>
<td>Tech Details 3</td>
</tr>
</tbody>
</table>
Tech Abuse – Our Codes:

- **Yes** = Tech abuse was involved
- **Unknown** = Does not mention any specific involvement of tech abuse in the documents
- **Maybe** = Tech abuse is suspected to be involved
- **N/A** = Not involving a case of domestic abuse
- **Case of Interest** = A case of interest that needs to be investigated further
Activity #1: Bailii

Case Name: A and B (No. 2) (SGO) (domestic abuse no direct contact to father) [2020] EWFC B15 (06 March 2020)
Activity #2: **LexisNexis**

**Case Name:** R v Dalgarno – CA, Criminal Division – 25 February 2020
Activity #3: **Westlaw**

**Case Name:** General Medical Council v Saeed
Queen's Bench Division (Administrative Court)
[2020] EWHC 830 (Admin) 7 Apr 2020
Some questions for you:

• Who were the judge(s) in this case?
• What was the sentence in this case?
• What was the decision?
• Do you think tech abuse was involved?
1. **A and B (No. 2) (SGO) [2020] EWFC B15 (06 March 2020)**


3. **General Medical Council v Saeed**
   Queen's Bench Division (Administrative Court) [2020] EWHC 830 (Admin) 7 Apr 2020

• Who were the judge(s) in this case?

• What was the sentence in this case?

• What was the decision?

• Do you think tech abuse was involved?
(7) Questions?

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Thank you.
To learn more about **REPHRAIN**
and how to get involved:

- www.rephrain.ac.uk
- @REPHRAIN1
- rephrain-centre@bristol.ac.uk

Thank you!
Additional Activity #4: Bailii

Case Name: AB v EM (Jurisdiction Foreign Custody Order), Re [2020] EWHC 549 (Fam) (12 March 2020)